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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

In re:
ROBERT EDWIN JACOBSEN
xxx-xx-2723
P.O. Box 1386
Lafayette, CA 94549
Debtor.

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Case No. 07-41092

Chapter 7

JOINT MOTION OF ROBERT JACOBSEN AND ALISE MALIKYAR TO
ABANDON REAL PROPERTY

NO HEARING WILL BE CONDUCTED HEREON UNLESS A WRITTEN RESPONSE IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY (20) DAYS FROM THE DATE OF SERVICE HEREOF UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH RESPONSE. IF NO RESPONSE IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF A RESPONSE IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

JOINT MOTION OF ROBERT JACOBSEN AND ALISE MALIKYAR TO ABANDON REAL PROPERTY

TO THE HONORABLE JUDGE OF THE BANKRUPTCY COURT:

NOW COMES ROBERT JACOBSEN, Debtor ("JACOBSEN") and his wife, Alise Malikyar ("Malikyar") in this Chapter 7 bankruptcy, which seeks a hearing abandon real property known as 2324 Tice Valley Blvd, Walnut Creek, CA:

History

3/2/09 Trustee lists the Tice Valley property for sale with REMAX

6/9/09 The Court ordered that the automatic stay regarding Greenpoint Mortgage be placed against the property for 180 days from the date of the order. The stay lifts 12/6/09.

1. The Tice Valley property has been listed for sale for 275 days as of 10/12/09, the day of this printing.
2. The first mortgage automatic stay lifts on 12/6/09
3. Malikyar wishes to keep her home, but given the eminent lifting of the stay followed by the foreclosure sale, she needs time to finalize financing or to negotiate a loan modification with the existing lender.
4. According to the MLS information regarding the Tice Valley house, the last stated price shows as \$850,000.
5. The existing debt on the property is:
 - a. Greenpoint Mortgage \$835,000 (estimated)
 - b. Back property taxes due \$ 9,692
 - c. Wells Fargo Bank \$ 10,000 (actually \$250,000 + interest)
 - d. Coast Capital \$210,000 (estimated)

6. The Trustee has verbally told the court that he has Wells Fargo in agreement to settle for a payment in full. Debtor's request to see documents supporting this have not been forthcoming.
7. There is significant work needed to fix termite and dry rot damage that is not included in the list above.
8. Escrow and title are not included in the list above.
9. There is no sales commission mentioned in the above list. 5% of a hypothetical \$900,000 sales price is \$45,000.
10. Alise Malikyar ("Malikyar") still feels strongly that the Tice Valley property is her sole and separate property. The marital agreement is valid. Exhibit A shows California Family Code, §1611 where it clearly states a premarital agreement needs to be signed by both parties, nothing about notarized or recorded. When this matter was heard in the bankruptcy court, Mr. Levick, attorney for the Trustee cited a section of California law saying the marital agreement needed to be notarized and recorded. Mr. Levick did not give any advance notice that he was going to be citing this section of California law. After the hearing, the law was researched and determined it had to do with separating community real property after marriage. This property has always been separate so this law does not apply. Nowhere else in the California law does it say a marital agreement has to be notarized or recorded. Therefore the Tice Valley property is separate property of Malikyar. The separate property issue is part of the 5th Circuit appeal waiting to be heard regarding the conversion of this bankruptcy from Chapter 13 to 7.

11. Not counting the Coast Capital loan, for any money to come to the owner of the Coast Capital loan (the Trustee it is assumed), the house would have to sell for in excess of \$900,000. This does not take into account termite work, title and escrow cost, additional fees incurred by the foreclosing first mortgage holder.

Conclusion

There is no money expected to come to the estate from the sale of the Tice Valley house. By the time this motion is heard, the house will have been on the market over 10 months with no credible offers having been received. The Trustee is collecting the rent and not making payments on the house or paying property taxes, so the house is falling further and further into debt.

Request

The Debtor and his wife (Malikyar) request the court abandon the Tice Valley house back to Malikyar.



/s/ Robert Jacobsen

Robert Jacobsen



/s/ Alise Malikyar

Alise Malikyar

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing JOINT MOTION OF ROBERT JACOBSEN AND ALISE MALIKYAR TO ABANDON REAL PROPERTY
JOINT MOTION OF ROBERT JACOBSEN AND ALISE MALIKYAR TO ABANDON REAL PROPERTY

has been served on all parties listed below via United States First Class Mail, postage prepaid as required or by electronic service through the EM/ECF Internet web portal for this court per the local and federal rules of procedure. Service was on October 12, 2009.

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 10/12/09

Osman Malikyar